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Arizona Corporation Commission  
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Commissioner

## BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF COMPETITION  
IN THE PROVISION OF ELECTRIC  
SERVICES THROUGHOUT THE  
STATE OF ARIZONA

DOCKET No. U-0000-94-165  
COMMENTS OF THE IRRIGATION AND  
ELECTRICAL DISTRICTS' ASSOCIATION  
OF ARIZONA ON THE COMMISSION'S  
PROPOSED RULES REGARDING THE  
INTRODUCTION OF RETAIL ELECTRIC  
COMPETITION TO ARIZONA

The Irrigation and Electrical Districts' Association of Arizona (IEDA) is a non-profit Arizona association whose membership includes fourteen irrigation, electrical and water conservation districts, a water users association and an Indian community, all of which provide electric service at retail to consumers in Arizona. Each of them has different mixes of loads, although all of the membership serves primarily irrigation loads, primarily in rural parts of central and southwestern Arizona. None of the members are public service corporations subject to the jurisdiction of the Arizona Corporation Commission (Commission). None of the members have an exclusive right to serve. Indeed, at the present time, all but one of the members serve retail electricity in their service areas simultaneously with retail electric service also being served by one or more other utilities in the same service area. Thus, all but one of the IEDA membership is currently engaged in retail competition and all the

1 IEDA membership is already subject to such competition by other  
2 utilities.

3 We have participated in the informal proceedings leading up to  
4 the formal proposed rulemaking through our attorney, undersigned, and  
5 by attendance of representatives of members. We have the following  
6 comments on the proposed rules:

7  
8 1. The Proposed Rules Ignore Non-jurisdictional Utilities Such  
9 As IEDA Members And Thus Only Interfere With The Little Bit of Retail  
10 Competition Already Underway In Arizona.

11 We take pains to point out the overlapping service that  
12 occurs and can occur in the service areas of our members because they  
13 have been totally ignored in the crafting of these proposed rules.  
14 There is not one reference in the entire rulemaking that could be  
15 said to reflect on the way the rules are to apply where retail  
16 competition already exists in Arizona. Most of our members are  
17 restricted to some extent as to the loads they can serve by State  
18 law. Some of them are additionally restricted, for the time being,  
19 by contracts which limit the resources for which transmission  
20 utilities in Arizona agree to wheel power and for types of loads for  
21 which such wheeling is agreed by the transmitting utility to take  
22 place. Obviously, these wheeling arrangements fly in the face of the  
23 concept of retail competition, but they exist. Conversely, the  
24 transmitting utilities in question are not currently and would not be  
25 restricted from competing with IEDA members or other similar  
26 entities. IEDA members and others have survived in this unlevel  
27  
28

1 playing field nevertheless. That they have done so is testimony to  
2 the fact that they can deliver retail electric service in competition  
3 with larger utilities and at rates that retail consumers they serve  
4 find attractive. Theoretically, that is the point of these  
5 regulations. It is difficult to understand, therefore, why this  
6 entire class of electric utilities in Arizona has been ignored to  
7 date in this rulemaking process. Since our customers already have  
8 choice, their current advantage over other electric utility customers  
9 in Arizona should be recognized and these rules should do nothing to  
10 impair that advantage. Rather, these rules should attempt to move  
11 others into similar advantage. To repair this oversight, the very  
12 least the rules could do is to insert in a new section concerning  
13 "Applicability", after the definitions, the following provision:  
14

15       Nothing in these rules is intended impair or otherwise affect  
16       the customer choice currently available to retail customers that  
17       already may choose among electric utility service providers  
18       under existing law and regulations.  
19

20       **2. The Commission's Proposed Rules Should Be Modified To Avoid**  
21 **Raising Constitutional Challenges.**

22       The proposed rules are replete with references that raise  
23 constitutional issues all tied to the definition of "public service  
24 corporation" in the Arizona Constitution. As the Commission well  
25 knows, it has no jurisdiction beyond the four corners of that  
26 definition. It would take a constitutional amendment to alter that  
27 reality. Thus, references to the Salt River Project Agricultural  
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1 Improvement and Power District (SRP) in the definition of "affected  
2 utilities", the failure to confine the definition of "electric  
3 service provider" to a public service corporation, the failure to  
4 likewise limit that latter definition in R14-2-1603.B., and the  
5 convoluted attempt to dance around the problem while facially  
6 enlarging the Commission's jurisdiction in R14-2-1611 (In-State  
7 Reciprocity), all endanger the viability of these rules. The  
8 Commission must choose whether the next level of debate on  
9 jurisdiction occurs in the judicial branch or the legislative branch.  
10 If it is the former, then certainly the goals of this proposed  
11 rulemaking will be thwarted by what could be substantial extensions  
12 of the Commission's intended timetable. Others have addressed the  
13 legal arguments involved and we will not duplicate that effort.  
14 Suffice it to say that this is a potential controversy not within the  
15 powers of the Commission to resolve and it should not attempt to do  
16 so.  
17

18  
19 3. There Are A Number Of Other Problems Concerning The Rules,  
20 Both As To Wording And Substance, That Arise From Matters Included In  
21 The Rules.

22 a) The definition of "stranded cost" uses the term  
23 "verifiable" without further reference in the proposed rules. This  
24 term of art can be either a process standard or a substantive  
25 standard or both. It is not explained and yet this will be a major  
26 bone of contention. The intent of the Commission should be  
27 clarified.  
28

1           b)    The "system benefits" definition, matched with the  
2 proposed rule on that subject (R14-2-1608) and the solar portfolios  
3 standard (R14-2-1609), apparently would allow recovery of solar  
4 energy costs only against consumers participating in the competitive  
5 market and not those that stay home. Thus, affected utilities are  
6 forced to acquire uneconomic resources and then are limited as to the  
7 ability to spread those costs. Electric service providers are not  
8 specifically so limited, raising the issue of potential  
9 discriminatory application of requirements.  
10

11           c)    The new certificate of convenience and necessity rule  
12 (R14-2-1603) restricts new entrants (electric service providers) to  
13 the geographical areas served by affected utilities. Thus, these new  
14 entrants, to the extent they are public service corporations, could  
15 be validly restricted by the Commission to providing competitive  
16 service only against other public service corporations. This  
17 artificial geographic limitation flies in the face of the concept of  
18 retail competition. For most of the State, the Commission is turning  
19 the electric CC&N into a professional license. For the areas left  
20 out, it is somewhat akin to saying that you can practice medicine in  
21 Arizona once licensed but only in certain counties.  
22

23           Moreover, this is a perfect example of how the rules  
24 do not fit the circumstances of IEDA members. Under this rule, an  
25 electric service provider would be required to notify an affected  
26 utility about its entry into the market but not the IEDA member or  
27 other similar entity providing electric service in the same area.  
28

1 Does the Commission also intend that the electric service provider  
2 could not compete against the non-jurisdictional entity serving in  
3 that same area?

4           d) The rules are totally deficient in describing the  
5 process with regard to the setting and changing of rates. References  
6 in R14-2-1606.G., R14-2-1608.A., R14-2-1612, and elsewhere suggest  
7 that the Commission has some idea of a rate process that it will  
8 conduct in the future even after market-based ratemaking is fully  
9 established. Yet, there is no reference to notice requirements  
10 otherwise found in Commission rules nor is there any reference to the  
11 Rules of Practice and Procedure and how they apply. It is also  
12 unclear whether the Rules of Practice and Procedure can be used to  
13 complain about non-compliance with these rules by an affected utility  
14 or electric service provider. Will all of these procedures be  
15 handled by special orders?  
16

17           e) The proposed rule on spot markets and independent  
18 system operation (R14-2-1610), portions of the proposed rule on in-  
19 state reciprocity (R14-2-1611.C.) and the proposed rule on dispute  
20 resolution (R14-2-1615.D.) do not appear to be proper subjects for  
21 regulation. To the extent that these proposals appear to order the  
22 Commission to begin a course of action, they smack of legislative  
23 mandates more appropriate to the Legislature than the Commission. To  
24 the extent that these provisions merely indicate that the Commission  
25 might do something in the future, they do not regulate the activity  
26  
27  
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1 or conduct of any entity subject to regulation by the Commission and  
2 have no business in regulations.

3 f) The general provisions about applicability found in  
4 R14-2-1613.A. and B. do not belong there. Rather, they should be  
5 combined with other provisions in a general statement of  
6 applicability of other portions of the Commission's rules and  
7 regulations, including the provision we have suggested and  
8 applicability of existing rules on notice, hearings and other  
9 practice and procedure rules.  
10

11 g) The provision on variations or exemptions conflicts  
12 with the existing rule (R14-2-212.I.), yet these rules appear to  
13 incorporate that existing rule.

14 **4. There Are Several Issues Raised By Omission In These Rules.**

15 a) As discussed in the informal and formal processes  
16 leading up to publication of these proposed rules, the basic issue of  
17 who provides the safety net for those who have left a provider and  
18 return have not been addressed.  
19

20 b) Jurisdiction over foreign corporations has not been  
21 addressed. The Arizona Constitution acknowledges State authority as  
22 to foreign private corporations doing business in Arizona but these  
23 rules do not attempt to directly implement that mandate as to such  
24 private corporations entering Arizona that would become public  
25 service corporations in Arizona by their conduct.

26 c) The rules do not address the issue of competition from  
27 outside Arizona where there is insufficient presence for the  
28

1 competitor to be treated as an electric service provider or the even  
2 more difficult subject of a municipal corporation from outside  
3 Arizona providing service in Arizona. The latter issue is more  
4 difficult because our Constitution is silent on the subject of  
5 foreign municipal corporation regulation.

6       5.     The Proposed Rule On In-State Reciprocity (R14-2-1611)  
7     Needs To Be Amended.  
8

9           A.     This subparagraph would make sense if it were clear  
10 that the use of the term "Arizona electric utilities" here and  
11 elsewhere in the rules was confined to public service corporations.  
12 That clarification would be consistent with the definitions  
13 incorporated by reference. Subsection B would then complement  
14 subsection A.

15           C.     As previously discussed, this subsection appears to be  
16 legislating activity of a future Commission through rulemaking. It  
17 suggests separation of powers problems and clearly is not regulating  
18 conduct of regulated entities.  
19

20           D.     This provision attempts to draw Arizona political  
21 subdivisions that are in the retail electric utility business into  
22 this rulemaking in a voluntary fashion. Unfortunately, it uses  
23 improper terminology, "Arizona electric utility", contains a caveat  
24 requiring "enforcement mechanisms" to be established (which can't be)  
25 and allows public service corporations that are affected utilities  
26 subject to this rule to veto such voluntary participation, an  
27 improper attempt to delegate to public service corporations  
28



1 jurisdictional authority the Commission does not have. Moreover,  
2 such delegation, if coupled with a properly written voluntary  
3 reciprocity rule, would constitute an improper delegation of  
4 authority from the Commission to regulated entities.

5           If we start from the assumption that non-regulated  
6 entities providing electric service in Arizona at retail should be  
7 encouraged to voluntarily participate in retail electric competition,  
8 the ostensible purpose of this provision, then public policy would be  
9 served by writing this provision correctly within the current limits  
10 of the Commission's jurisdiction. That would not only avoid the  
11 jurisdictional fight embodied in the proposal but would actually  
12 encourage something beneficial: broader retail competition. Toward  
13 that end we have the following suggestion to substitute for the  
14 proposed subsection D:  
15

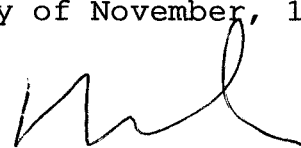
16       An Arizona entity providing retail electric service to  
17 consumers, not subject to the jurisdiction of the Commission,  
18 may voluntarily file with the Commission its standard offer  
19 tariff, electric supply tariffs, unbundled services rates,  
20 stranded cost charges, system benefits charges, distribution  
21 service charges and any other applicable tariffs, for services  
22 these entities offer, for which these rules otherwise require  
23 filing by affected utilities or electric service providers. For  
24 any such entity having an exclusive service territory at the  
25 effective date of these rules, the entity may submit its  
26 statement that it voluntarily opens its service territory for  
27  
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1 competing sellers. Such filings shall serve as authorization  
2 for such entities to utilize the Commission's Rule of Practice  
3 of Procedure and other applicable rules concerning any complaint  
4 that an affected utility or electric service provider is  
5 violating any provisions of this article or otherwise  
6 discriminating against the filing entity or failing to provide  
7 just and reasonable rates in tariffs filed under this article.  
8

9 What we are suggesting essentially defines a new role  
10 for the Commission, one that the Federal Energy Regulatory Commission  
11 (FERC) already plays. FERC, dealing with transmission, has used a  
12 slightly different version of this "carrot and stick" approach but  
13 with the same recognition of the limits on its jurisdiction and the  
14 value that its role in ensuring compliance with its rules has to the  
15 industry generally, including utilities over which it has no direct  
16 jurisdiction.  
17

18 We realize that SRP has suggested a negotiated  
19 approach using intergovernmental agreements to address issues that  
20 have been raised in this proceeding about non-jurisdictional  
21 entities. Our approach would not preclude using that tool. However,  
22 the elements and provisions of intergovernmental agreements on this  
23 subject should have some common yardstick and not be negotiated on an  
24 ad hoc basis. Getting there will require some considerable effort.  
25 In the meantime, this provision could be put in place at once,  
26 pending the outcome of the various working group determinations and  
27 further negotiation on the subject of intergovernmental agreements.  
28

1 Respectfully submitted this 29th day of November, 1996.


2  
3 

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CERTIFICATE OF SERVICE

The original and ten (10) copies of the foregoing Comments of the Irrigation and Electrical Districts' Association of Arizona on the Commission's Proposed Rules Regarding the Introduction of Retail Electric Competition to Arizona were filed this 29<sup>th</sup> day of November, 1996, with:

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